Supreme Court, U.S.
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No. 90-1119

In The

# Supreme Court of the United States

October Term, 1990

ROLAND A. LEBLANC,

*Petitioner,*

v.

RAYTHEON COMPANY, INC. and UNITED STATES OF AMERICA,

*Respondents.*

**Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit**

## REPLY BRIEF

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**The Amicus Brief In Opposition To Certiorari Filed By AIA Misreads The First Circuit Opinion And Otherwise Misses The Mark**

Defendant Raytheon has filed no brief in this case in this or any other court. However, an industry trade association, Aerospace Industries of America ("AIA"), of which Raytheon is a member, has filed an amicus curiae opposition to the granting of certiorari.

AIA maintains that this case is not worthy of certiorari. In support of its position, AIA asserts that Petitioner LeBlanc misreads the First Circuit decision, that there consequently is no conflict among the Circuits regarding the interpretation of 31 U.S.C. § 3730(e)(4), and that the procedural posture of the case makes it inappropriate for certiorari.

AIA's arguments are without merit. Indeed, the mere fact that the AIA felt compelled to file an amicus brief in this case is, in and of itself, evidence that the issues presented in LeBlanc's Petition for Writ of Certiorari are important and merit the attention of this Court.[1]

As to the First Circuit's reasoning, it is AIA, not LeBlanc, that misreads the opinion. AIA asserts that the First Circuit found LeBlanc's Complaint to be based on a "public disclosure" within the meaning of 31 U.S.C. § 3730(e)(4) and, only then, sought to determine whether LeBlanc qualified as an "original source".

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[1] Further indications of general significance and importance of this case are the number of appeals now pending and the fact that three amicus briefs were filed in the First Circuit. These amici were AIA, The National Treasury Employees Union and The Department of Justice.

Nowhere in its brief does AIA cite language in the First Circuit opinion supporting its interpretation of the Court's reasoning. The obvious reason is that the First Circuit never sought to determine whether LeBlanc's Complaint was based upon a "public disclosure" of information. Rather, it went directly to the question of whether LeBlanc met the requirements of an "original source", and determined that he did not.

It is the same AIA misinterpretation of the First Circuit decision that led it to the erroneous conclusion that there is no conflict among the Circuits regarding the proper interpretation of 31 U.S.C. § 3730(e)(4). As LeBlanc's Petition sets out, the Circuit interpretations of 31 U.S.C. § 3730(e)(4) are in conflict. *See* LeBlanc's Petition for Writ of Certiorari at pages 9-13. Moreover, even the AIA makes no effort to reconcile the conflicting District Court decisions on the same issue.

Finally, AIA claims this case to be inappropriate for certiorari because the factual record was never developed, Raytheon never served and the Government's reservation of rights never adjudicated. It made no such contention in the First Circuit and neither the District nor the Circuit Court or even suggested that the record was inadequate. The record is in fact like any record where the case is dismissed on the pleadings. Moreover, the only issue posed by the petition for certiorari is the proper construction of 31 U.S.C. § 3730(e)(4) and the present record is clearly adequate for that purpose.

**This Case Also Presents A Conflict Of Positions Within The Department Of Justice**

This case originated with the filing by the Department of Justice of a Reservation of Rights and the denial

of petitioner's subsequent motion to strike that reservation.

In both District and Circuit Courts, the Civil Division of that Department filed lengthy briefs. It was the appellee for purposes of oral argument in the Court of Appeals.

In this Court, the Government for the first time asserts, through the Solicitor General, that the United States is not a party and has filed no brief either as a party or as an amicus. The Solicitor General's position is clearly inconsistent with that taken by the Civil Division in this and numerous similar cases.

As a result of the Solicitor General's letter, lower courts and other qui tam litigants are left in doubt as to what is the actual position of the United States both on the Government's role in Federal employee qui tam actions and on the Government's view as to whether Federal employees have standing to bring such actions.

Respectfully submitted,

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